

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-06-IH-2291
)	
COVAD COMMUNICATIONS GROUP, INC.)	FRN No. 0006912380
)	
Parent Company of NextWeb, Inc., Licensee of)	NAL Account No. 200732080028
Various Stations in the Microwave)	
Industrial/Business Pool and other Wireless)	
Services)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Covad Communications Group, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of resolving the Enforcement Bureau's investigation of compliance by Covad Communications Group, Inc. with Section 310(d) of the Communications Act of 1934, as amended.

2. For purposes of this Consent Decree, the following definitions shall apply:

- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (b) "Adopting Order" means an order of the Bureau adopting this Consent Decree without any modifications adverse to Covad.
- (c) "Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."
- (d) "Bureau" means the FCC's Enforcement Bureau.
- (e) "Commission" or "FCC" means the Federal Communications Commission.
- (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- (g) "Final Order" means that, with respect to the Adopting Order: (1) no request for stay or similar request is pending, no stay is in effect, the Adopting Order has not been vacated, reversed, set aside, annulled or suspended, and any deadline for filing such request that may be designated by statute or regulation has passed; (2) no timely petition for rehearing or reconsideration of the Adopting Order, or protest of any kind, is pending before the FCC and the time for filing any such petition or protest is passed; (3) the FCC does not have the Adopting Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (4) the Adopting Order is not under judicial review, there is no notice of appeal

or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed.

- (h) “Covad” means Covad Communications Group, Inc., and any affiliate, parent company, wholly or partially owned subsidiary, and all owners, including but not limited to, officers, directors, and partners of the foregoing.
- (i) “NextWeb” means NextWeb, Inc., and any affiliate, parent company, wholly or partially owned subsidiary, and all owners, including but not limited to, officers, directors, and partners of the foregoing.
- (j) “Investigation” means the Bureau’s investigation relating to whether Covad, in connection with its acquisition of NextWeb, Inc., engaged in an unauthorized transfer of control of certain licenses held by NextWeb, Inc., in willful and/or repeated violation of Section 310(d) of the Act.
- (k) “Parties” means the Bureau and Covad.

I. BACKGROUND

3. Covad is a national provider of integrated voice and data communications. In February 2006, Covad completed its acquisition of NextWeb, a broadband wireless carrier operating in California and Nevada. Covad represents that it assumed at the time of the transaction that NextWeb held only non-licensed facilities. However, Covad further represents that, in approximately May, 2006, it learned that NextWeb in fact held licenses and spectrum leases for microwave links for which applications requesting Commission consent or notification to the transfer of control from NextWeb to Covad, pursuant to Section 310(d) of the Act, should have been filed. Covad also learned that NextWeb had earlier acquired microwave licenses held by 1st Universe for which applications requesting Commission consent to the assignment from 1st Universe to NextWeb, pursuant to Section 310(d) of the Act, should have been filed. In June 2006, Covad voluntarily informed the Bureau of its failure, and NextWeb’s failure, to timely file such applications prior to Covad’s consummation of the NextWeb transaction, and the Bureau commenced its Investigation. In November, 2006, following an internal corporate investigation, Covad filed remedial applications for Commission consent to the transfer of 70 licenses and one spectrum lease from NextWeb to Covad, the notification of the transfer of control of one spectrum lease from NextWeb to Covad and the consent to the assignment of three licenses from 1st Universe to NextWeb. Those applications were subsequently granted in the ordinary course by the Wireless Telecommunications Bureau.

4. The Parties acknowledge that any forfeiture proceeding that might result from the Investigation would be time consuming and require substantial expenditure of public and private resources. In order to conserve such resources, to resolve the Investigation, and to promote compliance by Covad with Section 310(d) of the Act, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

II. AGREEMENT

5. The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Bureau by incorporation of such provisions by reference in an Adopting Order, which shall resolve and terminate the Investigation.

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6. The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission, and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission, or the Bureau pursuant to delegated authority, to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. Covad acknowledges that the Commission has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. Covad acknowledges that, pursuant to Section 310(d) of the Act, it should have filed applications for Commission consent to the transfer of control of various licenses and a spectrum lease from NextWeb to Covad and an application notifying the Commission of the transfer of control of a spectrum lease from NextWeb to Covad prior to Covad's acquisition of NextWeb and that NextWeb should have filed an application for Commission consent to acquire the licenses held by 1st Universe. Covad further acknowledges that it did not file such applications until approximately nine months after consummation of its acquisition of NextWeb.

9. The Bureau acknowledges that Covad voluntarily revealed its derelictions and NextWeb's derelictions to the Commission and, further, that Covad has cooperated with the Bureau in connection with its Investigation.

10. In consideration of the terms and conditions set forth herein, the Bureau agrees to terminate the Investigation. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Covad concerning the matters that were the subject of the Investigation or with respect to the basic qualifications of Covad to be a Commission licensee.

11. Covad agrees that it will develop and implement a comprehensive Compliance Plan within 30 days of the Effective Date for the purpose of ensuring its compliance with Section 310(d) of the Act and, further, to keep such Compliance Plan in effect for two years thereafter. The Compliance Plan will include, at a minimum, the following components:

a. Designation of Wireless Compliance Attorney. Covad will designate a member of its legal department to serve as the Wireless Compliance Attorney ("WCA"). The WCA will have responsibility for overseeing Covad's Wireless Compliance Program and ascertaining the existence of transactions and/or proposed transactions within Covad and/or NextWeb that trigger or may trigger compliance-related responsibilities under Section 310(d) of the Act. Covad and/or NextWeb personnel with questions regarding FCC compliance will be directed to the WCA for assistance.

b. Compliance Manual. Covad, through the WCA, will develop a Compliance Manual for distribution on or before the date of the initial Compliance Training Program described in Paragraph 11(c), to company lawyers, managers, and other parties responsible for the establishment, purchase, sale, and use of Covad's wireless assets. The Compliance Manual will include, in greater detail, the matters covered in the Compliance Training Program, *i.e.*, an overview of the Commission's requirements for license ownership and transfers of control, including the Commission's rules and the requirements of the Communications Act of 1934, as amended, regarding the need for prior approval of assignments of Commission authorizations and the transfer of control of

the holders of such authorizations. The Compliance Manual will be updated from time to time as needed.

c. Compliance Training Program. The WCA will conduct an initial education program within 90-days of the Effective Date for company lawyers, managers, and other parties responsible for the establishment, purchase, sale, and use of Covad's wireless assets. This education program will include an overview of the Commission's requirements for license ownership and transfers of control, including the Commission's rules and the requirements of the Communications Act of 1934, as amended, regarding the need for prior approval of assignments of Commission authorizations and the transfer of control of the holders of such authorizations. This education program will be updated and presented annually and additionally from time to time as needed to ensure that new employees are informed of regulatory compliance requirements and that existing employees are reminded of the same.

d. License Database. The WCA will assemble and maintain information about Covad and/or NextWeb wireless licenses. The database will be updated regularly and be accessible by all employees who deal with FCC wireless regulatory compliance or wireless systems.

e. License Renewals. The database will contain a tickler system that will alert the WCA whenever one of Covad's and/or NextWeb's licenses must be renewed. The WCA will then have responsibility for ensuring that the proper renewal application is filed and that FCC approvals are obtained.

f. License Assignments and Transfers. The compliance manual and related training program will contain information for Covad and/or NextWeb personnel regarding the need to conduct thorough due diligence regarding the potential FCC licenses of any company in a potential merger or acquisition transaction, the need to monitor any corporate reorganization for potential license assignment or transfer issues, and the need to obtain prior FCC approval for all assignments and transfers of control of FCC licenses.

g. Duty to Report. The WCA will report regularly to Covad's General Counsel and other senior management as necessary about the status of Covad's FCC-related compliance efforts. The WCA also will promptly notify Covad's General Counsel and other senior management as necessary about any transactions or proposed transactions of which he or she is aware which would or might affect Covad's compliance with Section 310(d) of the Act.

12. One year after the Adopting Order becomes a Final Order, Covad shall submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Company with personal knowledge of the representations therein, verifying that Covad has complied with the terms of this Consent Decree. The declaration shall be submitted to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The declaration or affidavit must comply with section 1.16 of the Commission's rules, 47 C.F.R. § 1.16, and be substantially in the form set forth therein.

13. Within five business days after the Adopting Order becomes a Final Order, Covad agrees that it shall make a voluntary contribution to the United States Treasury in the amount of \$35,000. The payment shall be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment shall include NAL/Acct. No. 200732080023 and Covad's

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FRN No. 0006912380. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 9116229.

14. Covad agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition, modification or deletion.

15. The Parties agree that if Covad, the Bureau, the Commission, or the United States acting on the Commission's behalf, brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, none shall contest the validity of this Consent Decree or the Adopting Order, and Covad shall waive any statutory right to a trial *de novo*.

16. The Parties agree that this Consent Decree and Covad's voluntary contribution are for settlement purposes only and do not constitute an admission, denial, adverse finding, adverse final action, adverse adjudication on the merits, or waiver of legal rights except as otherwise expressly set forth herein.

17. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Covad does not expressly consent), such provision will be superseded by such Commission rule or order.

18. Covad agrees that the terms and conditions of this Consent Decree shall be binding on its successors and assigns.

19. The Parties agree that in the event that this Consent Decree is rendered invalid in any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. Covad agrees to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

21. Covad and the Bureau each represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

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22. This Consent Decree may be executed in counterparts.

**FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU**

By: _____
Kris Anne Monteith, Chief

Date: _____

COVAD COMMUNICATIONS GROUP, INC.

By: _____
James A. Kirkland
Executive Vice President,
Strategic Development and
General Counsel

Date: _____